113. The leading case on this side of the question is *State* v. *McFetridge,* 84 Wis. 473, where all the authorities are reviewed. The supporting cases hold that it is a complete *non sequitur* to say that because a public officer who has charge of public funds is an absolute insurer, he therefore is entitled to the accruing interest thereon. A county treasurer is liable to the county for interest received on deposits of county funds. His liability arises not only from his fiduciary relations but from the fact that the interest belongs to the county and comes into his hands by virtue of his office. *Richmond County Supervisors* v. *Wandel,* 6 Lans. (N. Y.) 33. Instead of being the debtor of the district, he is its treasurer; the custodian of its funds; and he acquires custody of the funds without acquiring title to them. *Eshelby* v. *Cincinnati Bd. of Education,* 66 Ohio St. 71. A public officer is not entitled to interest on funds received by virtue of his office. The true test is not whether he is absolutely liable to account but whether he is the owner of the funds in his hands. *Rhea* v. *Brewster,* 130 Ia. 729.

TAXATION—INCOME TAX—ROYALTIES OF MINES AS INCOME—DEPRECIATION. —Plaintiff corporation leased two iron mines, the lessees agreeing to pay certain specified royalties annually on the ore taken out. The Wisconsin Income Tax Law, LAWS 1911, c. 658, 1, provided that "income" as used in the act should include "all rent of real estate", and permitted a reasonable deduction for depreciation of property from which the income was derived. Under this act taxes were collected on the royalties received by the plaintiff, but no deduction was allowed for the depletion of the ore deposits. This action was brought to recover the taxes paid under protest. *Held,* that no recovery should be allowed. *Pfister Land Company* v. *Milwaukee* (Wis., 1917), 165 N. W. 23.

In holding that the value of the ore as it leaves the mine was income and not converted capital, and therefore that the royalties paid by the lessees to the owners were to be regarded as rents within the meaning of the Income Tax Law, the Wisconsin court has relied expressly upon the authority of *Von Baumbach* v. *Sargent Land Company,* 242 U. S. 503, and *State* v. *Royal Mineral Association,* 132 Minn. 232. The fundamental principle upon which these holdings are based seems to be as follows: that the land itself is the chief thing, that mining is one of the productive uses of which the land is capable, and that the product of that use should be called income. In a case recently decided in the Circuit Court of Appeals, *Biwabick Mining Company* v. *U. S.,* 243 Fed. 9, it was held that, from the lessee's standpoint, receipts from the sale of ore represented conversion of capital assets and did not constitute taxable income. This case has now been carried up for review by the Supreme Court. The position for which the appellant contended in the principal case, that the contract between the parties is not accurately speaking a lease but a sale of a part of the corpus of the property, has been approved by the English courts and has found some support in this country. *Coltness Iron Company* v. *Black,* 6 A. C. 315; *Stoughton's Appeal,* 88 Pa. 98; *Blakley* v. *Marshall,* 174 Pa. 425; *Wilson* v. *Youst,* 43 W. Va. 826. Its further contention that the extraction of the ore is an exhaustion of the

capital, and hence depreciation, is not without logical foundation in economic theory. In *Earl of Derby* v. *Aylmer* [1915], 3 K. B. 374, a somewhat analogous question was raised concerning a tax which was imposed on the income which the Earl received from the services of two stallions for breeding purposes. He claimed a deduction as depreciation for the annual loss in value of the horses, computed on the probable length of time during which they could be used for the above purposes. In rejecting the Earl's claim, the court emphasized a consideration which is of prime importance in dealing with cases arising under income tax laws—while such contentions may be sound from an accountant's point of view, courts must be governed by the intention of the legislature.

TAXATION—INHERITANCE TAX—DOWER.—The State attempted to collect inheritance tax on a dower interest allotted to a widow, upon her dissent from testator's will. A statute provided that all real and personal property which passes by will or intestate laws of the state from any person who may die seized of the same should be subject to an inheritance tax, allowing, however, exemptions in favor of a widow and children for certain amounts. *Held,* dower is property which passes by the intestate laws of the State. *Corporation Commission et al* v. *Dunn et al* (N. C., 1917), 94 S. E. 481.

The weight of authority is represented by the recent case of *In re Bullen's Estate* (Utah, 1915), 151 Pac. 533, which holds that dower passes to the widow as of her own right by purchase and not by "intestate laws". *In re Weiler's Estate,* 122 N. Y. S. 608; *In re Shield's Estate* (N. Y.) 68 Misc. 264; *Crenshaw* v. *Moore,* 124 Tenn. 528; *Commonwealths Appeal,* 34 Pa. 204. Only one case can be found which supports the theory of the principal case that dower is inherited and is subject to an inheritance tax. *Billings* v. *People,* 189 Ill. 472. In the concurring opinion it was urged that the intention of the legislature, as shown by the history of legislation on the subject and the changes made by the act in question whereby the widow was allowed an exemption, was that dower should come within the meaning of the phrase "intestate laws of the State". But the dissenting opinion maintained the view that the fact, that the widow is allowed an exemption where none was allowed before, does not show that her dower is taxable as she may derive personal property from her husband under the intestacy law as one of the distributees, and to this the exemption would apply, and not to property already made not taxable by the language of the statute.

WILLS—CONTRACT TO OPERATE ON DEATH.—An action in assumpsit was brought alleging that defendant promised plaintiff's decedent in writing to pay plaintiff $275 for the interest of decedent in the business in which decedent and defendant were engaged, in case defendant should survive, that the consideration for the promise was the agreement of decedent that defendant should have the business in that event, and that defendant took possession on the death of his partner. *Held,* no cause of action was stated; because the transaction alleged was testamentary, not contractual, and retaining possession proved nothing, because a surviving partner is entitled to do so. *Ferrara* v. *Russo* (R. I., 1917), 102 Atl. 86.